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No. 80-1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JAMES TAMER, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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Pursuant to Rule 22.6 of the Rules of this Court, petitioner Tamer submits this Supplemental Brief to call the Court's attention to a recent decision of the District of Columbia Court of Appeals relating to the first question presented in our Petition — whether a defendant is entitled, under the Sixth Amendment, to a specific unanimity instruction when he is charged in one count with two or more separate offenses.

In *Hawkins v. United States,* ___ A.2d ___ (D.C.C.A. No. 80-1032, Aug. 13, 1981), the District of Columbia Court of Appeals ruled that in a case involving multiple charges against a defendant, "[w]here one charge encompasses two separate incidents, the judge must instruct the jury that if a guilty verdict is returned the jurors must be unanimous as to which incident or incidents they find the defendant guilty." Relying upon *United States v. Gipson,* 553 F.2d 453 (5th Cir. 1977), the court recognized the "constitutional magnitude" of the

right to such an instruction and reversed the defendant's conviction on a charge involving alternative grounds of culpability, holding that despite the defendant's failure to object, the lack of a specific unanimity instruction constituted plain error.

As *Hawkins* and the other decisions cited in our Petition demonstrate, this case thus presents a recurring issue of considerable importance upon which the appellate courts are divided. If the Court denies the request for summary reversal set forth in petitioner's Reply Brief, this Sixth Amendment question warrants review.

Respectfully submitted,

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